Option means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

Subpart B—Programs

§ 1026.200 General.

Futures commission merchants and introducing brokers in commodities are subject to the program requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart B of part 1010 of this chapter for program requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.210 Anti-money laundering program requirements for futures commission merchants and introducing brokers in commodities.

A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(a) The financial institution complies with the requirements of §§1010.610 and 1010.620 of this chapter and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(b) (1) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(2) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

§ 1026.220 Customer identification programs for futures commission merchants and introducing brokers.

(a) Customer identification program: Minimum requirements—(1) In general.

Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (a)(5) of this section. The CIP must be a part of each futures commission merchant’s and introducing broker’s anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) Identity verification procedures. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant’s or introducing broker’s assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant’s or introducing broker’s size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (a)(2) of this section.

(i)(A) Customer information required.

The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (a)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

(I) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:
(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: A taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (a)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) Exception for persons applying for a taxpayer identification number. Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) Customer verification. The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (a)(2)(i) of this section, within a reasonable time before or after the customer’s account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (a)(2)(ii).

(A) Verification through documents. For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(1) For an individual, an unexpired government-issued identification document evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver’s license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) Verification through non-documentary methods. For a futures commission merchant or introducing broker relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(1) These methods may include contacting a customer; independently verifying the customer’s identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The futures commission merchant’s or introducing broker’s non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) Additional verification for certain customers. The CIP must address situations where, based on the futures commission merchant’s or introducing broker’s risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain
information about individuals with authority or control over such account in order to verify the customer’s identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer’s true identity after using the verification methods described in paragraphs (a)(2)(ii)(A) and (B) of this section.

(iii) Lack of verification. The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer’s identity;

(C) When an account should be closed after attempts to verify a customer’s identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) Recordkeeping. The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (a) of this section.

(i) Required records. At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (a)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (a)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (a)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) Retention of records. Each futures commission merchant and introducing broker must retain the records made under paragraph (a)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (a)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) Comparison with government lists. The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) Customer notice. The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) Adequate notice. Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) Sample notice. If appropriate, a futures commission merchant or introducing broker may use the following
Financial Crimes Enforcement Network, Treasury § 1026.312

sample language to provide notice to its customers:

Important Information About Procedures for Opening a New Account

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) Reliance on another financial institution. The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(b) Exemptions. The CFTC, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the CFTC or any type of account from the requirements of this section. In issuing such exemptions, the CFTC and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(c) Other requirements unaffected. Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this chapter, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

Subpart C—Reports Required To Be Made by Futures Commissions Merchants and Introducing Brokers in Commodities

§ 1026.300 General.

Futures commission merchants and introducing brokers in commodities are subject to the reporting requirements set forth and cross referenced in this subpart. Futures commission merchants and introducing brokers in commodities should also refer to subpart C of part 1010 of this chapter for reporting requirements contained in that subpart which apply to futures commission merchants and introducing brokers in commodities.

§ 1026.310 Reports of transactions in currency.

The reports of transactions in currency requirements for futures commission merchants and introducing brokers in commodities are located in subpart C of part 1010 of this chapter and this subpart.

§ 1026.311 Filing obligations.

Refer to §1010.311 of this chapter for reports of transactions in currency filing obligations for futures commission merchants and introducing brokers in commodities.

[76 FR 10521, Feb. 25, 2011]

§ 1026.312 Identification required.

Refer to §1010.312 of this chapter for identification requirements for reports